IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.09.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

CMA.No.2995 of 2009

1. Dhanalakshmi
2. Minor Kishore
3. Devi ... Appellants

Vs.

1. Venkatesan

2. National Insurance Company Limited,
 Branch Office No.1,
 Thanthai Periyar Complex,
 Near Old Bus Stand, Salem-1.

3. A.Palanimalai

4. National Insurance Company Limited,
 Matturdam-1.

5. Jem Granites

6. Oriental Insurance Company Limited,
 Oriental House, II Floor,
 115, Prakasam Salai, Chennai-104.

7. P.Mani

8. National Insurance Company Limited,
 II Floor, Bajaj Towers,
 11, Ramakrishna Salai, Salem-7. ... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the orders dated 23.07.2009 passed in MCOP.No.51 of 2007 on the file of the Subordinate Judge/Motor Accident Claims Tribunal, Mettur.

For Appellants : Ms.R.Meenal

For Respondents : Mr.S.K.Krishnamoorthy (for R6)
No appearance for R1 to R5 and R7, and R8.

J U D G M E N T

The appellants are the claimants in MCOP No.51 of 2007 on the file of the Subordinate Judge/Motor Accident Claims Tribunal, Mettur and they filed the above said claim petition under Section 166 of the Motor Vehicles Act seeking compensation of Rs.20,00,000/- for the death one Sasikumar, husband of the first claimant, father of the 2nd claimant and son of the 3rd claimant, in a road accident that took place on 19.12.2006.

2.The case of the appellants/claimants is that on 19.12.2006, when the deceased Sasikumar was travelling in a Tata Goods vehicle bearing Registration No.TDR-6975 along Bangalore Bye-pass road, the driver of the Tata Goods vehicle drove the vehicle rashly and negligently and hit a Maruthi van bearing Registration No.TN-33-J-0094 and also hit a lorry bearing Registration No.TN-27-S-5547 as a result of which, the deceased, who was sitting in the Tata Goods vehicle sustained multiple injuries all over his body. Immediately, he was rushed to Gokulam Hospital, Salem from where, he was referred to the Government Mohan Kumaramangalam Hospital, Salem. However, he succumbed to injuries on the same day. According to the claimants, the rash and negligent driving of the driver of the Tata Goods vehicle was the cause of accident and that since the first respondent insured his vehicle with the 2nd respondent, the National Insurance Company Limited, both of them are jointly and severally liable to pay compensation to them.

3. The first and 5th respondent remained absent before the Tribunal and therefore, they were set exparte. The other respondents contested the claim petition.

4. The learned Subordinate Judge/Motor Accident Claims Tribunal, Mettur, after analysing the evidence on record, awarded a compensation of Rs.4,24,000/- together with interest at the rate of 7.5% per annum to the claimants and directed the first respondent, the owner of the Tata Good vehicle, to pay the entire compensation amount to them. The Tribunal had further held that since the deceased was travelling as a gratuitous passenger in the Tata Goods Vehicle, the insurer, the 2nd respondent is not liable to pay compensation to the claimants and also dismissed the claim petition as against the respondents 2 to 8. Aggrieved over the orders passed by the Tribunal, the claimants have filed the present appeal.

5. Ms.R.Meenal, learned counsel appearing for the appellants/ claimants contended that since the deceased was travelling as a co-driver in the Tata Goods vehicle bearing Registration No.TDR-6975 belonging to the first respondent and insured with the 2nd respondent, The National Insurance Company Limited, Salem, should be made liable to pay compensation to the claimants. She further contended that the compensation awarded by the Tribunal is also very meagre and the same is liable to be enhanced.

6. A perusal of the records shows that he driver of the Tata Goods vehicle bearing Registration No.TDR-6975 was

rash and negligent in driving his vehicle and in fact, the First Information Report was registered against the driver of the Tata Goods vehicle bearing Registration No.TDR-6975. No contra evidence was adduced on the side of the first and second respondents to show that the drivers of the other vehicles namely (i) Maruthi Omni bearing Registration No.TN-33-J-0094, (ii) Car bearing Registration No.TN-07-AE-5415 and (iii) Lorry bearing Registration No.TN-27-S-5547 were also equally responsible for the accident.

7. The Tribunal, after analysing the oral and documentary evidence adduced on the side of the claimants, had concluded that the driver of the Tata Goods vehicle bearing Registration No.TDR-6975 was rash and negligent in driving his vehicle and the observation of the Tribunal in this regard cannot be found fault with.

8. Now the main point which has got to be considered in the instant appeal is whether the insurance company (2nd respondent) is liable to pay compensation to the claimants, since the deceased travelled in the Tata Goods vehicle bearing Registration No.TDR-6975. The specific contention of the claimants is that the deceased was travelling as a co-driver in the goods vehicle and therefore, the insurance company is liable to pay compensation to them.

9. A perusal of the copy of the insurance policy (Ex.A6) shows that it is an "Act Policy" (liability only). in the decision in New India Assurance Company Limited Vs. S.Krishnasamy reported in 2015(1) TN MAC 19 (D.B) it has been held that the occupants of a vehicle cannot be termed as a third party, especially, when the vehicle had only " Act Policy" and not " Comprehensive package Policy". In the instance case, no premium was paid for occupants of the Tata Goods vehicle bearing Registration No.TDR-6975 and the policy covers only the third party risk.

10. While deciding the claim petition under Motor Vehicle Act, the tribunal should examine the terms of the policy produced by the insurer and in the event of denial of liability, the finding should be recorded with regard to the nature of the policy, as to whether it was " Act Policy " or " Package Policy". The Tribunal, In the instant case,l has not given any definite findings in this regard.

11. In the decision of the Division Bench of this court in Royal Sundaram Alliance Insurance Company Limited V. A.Meenakshi reported in 2009(1) TNMAC 249, the deceased was a passenger in a vehicle and on account of negligence of the driver, the accident took place, leading to the death of the passenger and the legal heirs of the deceased claimed compensation. The Insurance company disputed the claim on the ground that the passengers, who travelled in the car were gratuitous passengers and therefore, the insurance company is

not liable to pay any compensation. It was also contended by them that on payment of an additional premium under the insurance policy, coverage can be extended to five unnamed persons, for a capital sum of Rs.70,000/- each, in terms of India Motor Tariff (IMT) 16 and therefore, even if the insurance company is liable to pay compensation, its liability can be restricted to only Rs.70,000/- and not more than that. After considering the policy and the limits of liability, set out in the Motor Vehicles Act, 1988, the Division Bench held that a comprehensive/package policy covers the risk of the occupants also and therefore, the insurance company cannot escape from its liability to pay compensation.

12. In Sagar Chand Phool Chand Jain Vs. Santosh Gupta reported in 1985 ACJ 585, the Delhi High Court held that when the contract of policy describes it as a contract for " private car (comprehensive)" and provides for liability to third parties, the insurance company liable to indemnify the insured in the event of an accident caused by or arising out of the use of the motor car.

13. Under the Indian Motor Tariff (IMT), different types of policies are issued and they are contained in IMT Section 7 (page 107 of IMT). They are

a. Standard form for liability only policy,
b. Standard form for private car package policy.
c. Standard form for two wheeler package policy.
d. Standard form for commercial vehicles package policy.

e. Standard form for motor trade package policy and the like. Each policy is split into different sections to deal with different contingencies and the parties bind themselves to the terms of the clause contained in each section of the policy. For example, the package policy for a private car which is applicable to the present case contains:-

Section I Loss of or damage to the vehicle insured, Section II Liability to third parties, Section III Personal accident cover for owner-driver there are other conditions and limits. In this appeal, we are concerned with the liability of the insurance company in respect of a gratuitous passengers/occupants in a private vehicle (car).

The first policy in Section 6 of IMT is liability only policy or act only policy. In that the liability to third parties is set out as hereunder:-

LIABILITY TO THIRD PARTIES:

i] Subject to the Limit of liability as laid down in the schedule hereto, the Company will indemnify the insured in the event of accident caused by or arising out of the use of the Motor Vehicle anywhere in India against all sums including claimant's costs and expenses which the insured shall become legally liable to pay in respect of death of or bodily injury to any person so far as it is necessary to meet the requirements of the Motor Vehicles Act.

ii] damage to property other than property belonging to the insured or held in trust or in the custody of control of the insured up to the limit specified in the schedule (emphasis supplied).

14. Even if the deceased is considered as a co-driver working under the owner of the Tata Goods vehicle (first respondent), the insurance company (2nd respondent) cannot be held liable to pay compensation to him, since the policy is only an "Act Policy" and did not cover persons sitting in the goods vehicle. The Tribunal exonerated the liability of the insurance company to pay compensation mainly on the basis that the claimants have not adduced acceptable evidence to show that the deceased was a co-driver on the date of accident. However, as already observed, the insurance policy covers only a third party liability and not a person, who was sitting in the goods vehicle. Therefore, the 2nd respondent is not liable to pay compensation to the claimants.

15. As far as the quantum of compensation is concerned, the Tribunal has fixed the monthly income of the deceased as Rs.3,000/- and adopted multiplier '17 ', since he was aged 31 years on the date of accident. However, the Tribunal did not award any amount towards "Future Prospects". It is stated that the deceased was a driver by profession and hence Rs.7,500/- is fixed as monthly income of the deceased. As per the decision of the Constitution Bench of the Hon'ble Supreme Court of India in National Insurance Company Limited Vs. Pranay Sethi and others reported in 2017 (2) TN MAC 609 (SC), 40% should be added towards future prospects. As per the Postmortem Certificate (Ex.P3), the deceased was aged 30 years on the date of accident and therefore, proper multiplier to be adopted in the instant case is ' 17 ', as per per the decision rendered in Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121. There are 3 persons depending on the income of the deceased and hence, 1/3 should be deducted towards personal income of the deceased Thus, loss of dependency is calculated as follows.

Notional income -	- Rs.7,500
Add: 10% future prospects (7500+3000)	- Rs.10,500
Deduction 1/3 (10,500-3500)	- Rs.7,000

Proper multiplier - 17
Loss of dependency (7000 x 12 x 17) - Rs.14,28,000

Apart from this amount, the claimants are also entitled to Rs.15,000/- Rs.15,000/- and Rs.40,000/- towards "Loss of estate", "funeral expenses" and "loss of consortium"to the first claimant, respectively, as per the decision in National Insurance Company Limited Vs. Pranay Sethi and others reported in 2017 (2) TN MAC 609 (SC) (cited supra). The revised compensation awarded under various heads is extracted hereunder.

Sl.No	Heads	Amount
1	Loss of dependency (7000 x 12 x 17)	14,28,000
2	Loss of estate	15,000
3	Funeral expenses	15,000
4	Loss of consortium to the first claimant	40,000
	Total	14,98,000

This amount would carry interest at the rate of 7.5% per annum from the date of claim petition.

16. In the result,

(i) The civil miscellaneous appeal is partly allowed. No costs. The connected miscellaneous petition is closed.

(ii) The orders passed by the Tribunal fastening liability only on the first respondent to pay compensation to the claimants is upheld.

(iii) The compensation awarded by the tribunal is enhanced from Rs.4,24,000/- to Rs.14,98,000/-.

(iv) The appellants/claimants are directed to pay necessary court fees for the enhanced compensation awarded by this court, within three weeks from the date of this order.

(v) The first respondent/owner of the Tata Goods Vehicle is directed to deposit the revised compensation amount of Rs.14,98,000/- together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit (less the amount already deposited by them), within 4 weeks from the date of receipt of a copy of this order.

(vi) On such deposit being made by the first respondent/ owner of the Tata goods vehicle, the claimants are entitled to withdraw the same, after following due process of law and as per the ratio of apportionment made by the tribunal.

Sd/-

Assistant Registrar (CS-I)

//True Copy//

Sub Assistant Registrar

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To

1.The Subordinate Judge,
Motor Accident Claims Tribunal,
Mettur.

2. The Section Officer,
VR Section, High Court,
Madras.

+1cc to Mr.R.Meenal, Advocate, S.R.No. 83852

CMA.No.2995 of 2009

SS(CO)
GN(31/12/2019)